RESPONSE TO REQUEST
FOR ADDITIONAL REVIEW

COMPETITIVE BIDDING OF CONTRACTS
EMPLOYEE PARKING LOT EXPANSION CONTRACT
DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

PREPARED FOR
THE JOINT LEGISLATIVE SELECT COMMITTEE
ON THE WAYNE COUNTY DETROIT METROPOLITAN AIRPORT

27-620-00L

January 22, 2001

The Honorable Glenn D. Steil
Michigan Senate
Co-Chairperson, Joint Legislative Select Committee
1020 Farnum Building
Lansing, Michigan
and
The Honorable James L. Koetje
Michigan House of Representatives
Co-Chairperson, Joint Legislative Select Committee
N1093 Cora Anderson Building
Lansing, Michigan

Dear Senator Steil and Representative Koetje:

This special report is in response to your June 6, 2000 letter requesting a more detailed review of the Detroit Metropolitan Wayne County Airport (the Airport). This special report contains our responses to your specific requests in the general issue area of competitive bidding of contracts related to the Airport's employee parking lot expansion contract.

Specifically, you have asked us to determine the contract completion date, whether the contract was completed within the contract time specifications, and the details regarding liquidated damages, if applicable. You have also asked us to conduct a more detailed review and comment on the $241,032 in change orders associated with this contract. In addition, you have asked us to determine whether Wayne County ordinances require the Wayne County Commission to approve this contract and the significant change orders associated with this contract and whether the contract was approved in compliance with these ordinances. Finally, you have asked that we confirm the accuracy of the representations made in a newspaper article dated April 5, 2000.

Our procedures were of limited scope. Therefore, our review should not be considered an audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

We are available to present this special report to the Joint Legislative Select Committee on the Wayne County Detroit Metropolitan Airport upon request. If this is the Committee's desire or if you have any questions regarding this review, please contact me.

Sincerely,

Thomas H. McTavish, C.P.A.
Auditor General

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TABLE OF CONTENTS

COMPETITIVE BIDDING OF CONTRACTS
EMPLOYEE PARKING LOT EXPANSION CONTRACT
DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

	Page
Report Letter	1
Overview of the Employee Parking Lot Expansion Contract	4
Scope of Review	5
Comments	6
Exhibits*	
Exhibit A - Field Order - Change Order Log Dated September 12, 2000	18
Exhibit B - Change Order No. 10	20
Exhibit C - Change Order No. 8	22
Exhibit D - Change Order No. 7	24
Exhibit E - Supplementary Provisions - Liquidated Damages	27
Exhibit F - Response to Request for Additional Information Dated October 11, 2000	28
Exhibit G - Airport Response	30

**All exhibits of the Wayne County Detroit Metropolitan Airport Preliminary Review Reports are available by contacting the Office of the Auditor General in writing and specifying the exact exhibits that you would like to receive. Your written request, with your name and address, must be sent to: The Office of the Auditor General, 201 N. Washington Square, 6th Floor, Lansing, Michigan, 48913.*

OVERVIEW OF
THE EMPLOYEE PARKING LOT EXPANSION CONTRACT

The Detroit Metropolitan Wayne County Airport contracted with Waterland Trucking Service, Inc. (Waterland Trucking), for the expansion of an employee parking lot, which included excavation, drainage, bituminous paving, sight lighting, fencing, and pavement striping. The agreement stipulated that time was of the essence and that, after the contractor received "notice-to-proceed" from Wayne County, the work was to be completed within 45 consecutive calendar days.

The agreement was stipulated as a lump sum contract in the amount of $553,046. Change orders totaling $250,528 (45% of the original lump sum) were issued for this project. The change orders increased the cost of the project to $803,574 (see Exhibit A, field orders - change order log dated September 12, 2000). The change orders transformed the contract from a "lump sum" agreement to a "time and materials" agreement, abrogating the contractor's responsibility to complete the contract within the competitively bid time frame or contract price under which the contract was originally awarded.

Our Preliminary Review of Competitive Bidding of Contracts, Detroit Metropolitan Wayne County Airport, had reported that change orders of $241,032 increased the cost of the project to $794,078. Our preliminary review figure was based on a field order - change order log (dated October 1, 1999) contained within the Airport's contract files provided to us by the Airport during our preliminary review. We had also verified this figure to the Airport's Capital Improvement Program (CIP) Status Report for the employee parking lot expansion project.

As a result of this more detailed review, we have discovered an additional change order (No. 10) processed under this contract. The change order, dated February 12, 1998, for $9,496 was unrelated to the employee parking lot expansion project (see Exhibit B). Instead, it was associated with, and reported under, CIP project #AS-001.C.00.0 - Airport Signage. The change order was used to pay Waterland Trucking $9,496 for sign illumination work at the entrance of the Airport on Rogel Drive.

Another result of this more detailed review was the discovery that a change order (No. 8) issued under this contract was used to pay Waterland Trucking $9,080 for runway

repair, work unrelated to the employee parking lot expansion project (see Exhibit C). Additionally, the Airport paid Waterland Trucking $3,169 for light pole repair at Goddard and Merriman Roads under another change order (No. 7), which was work unrelated to the employee parking lot expansion project (see Exhibit D).

The Waterland Trucking agreement provided for liquidated damages of $250 per day beyond the allotted project time (45 days) for "substantial completion." The notice-to-proceed date was August 26, 1996, and the Airport considered the project to be "substantially complete" on November 13, 1996 (79 days) when no more than 22% of the parking lot was in use. The project was totally complete on October 19, 1997 (420 days).

This contract was not approved by the Wayne County Commission. The Airport indicated during our preliminary review that this contract did not require Commission approval because it fell under "delegated authority." In support of its assertion, the Airport cited Section 8 of the Wayne County Contracting Ordinance (84-143) and Section 41(F) of the Wayne County Appropriations Ordinance (99-497). These ordinances authorize the County Executive to execute contracts to implement projects within an annual Capital Outlay Plan that is approved by the Commission.

However, as explained below, we conclude that County ordinances required the Airport to obtain Commission approval for this contract. County ordinances did not require Commission approval for change orders associated with the employee parking lot expansion contract. However, two change orders totaling $18,576 were for work unrelated to the employee parking lot expansion project. This work was not subject to competitive bids and thus required Commission approval.

SCOPE OF REVIEW

Our procedures were of limited scope. Therefore, our review should not be considered an audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

We obtained and reviewed various documentation related to the contract, change orders, and contract payments. We interviewed relevant Airport employees and

contractors. We examined applicable Wayne County ordinances pertaining to Wayne County Commission approval requirements.

COMMENTS

Request:

Please determine the date that this contract was completed, whether it was completed within 45 days of the contract execution date and, if the contract was not completed within the contractually specified 45 days, whether the Airport attempted to collect liquidated damages as provided under the contract. If liquidated damages were not collected, please determine why they were not.

Procedure:

We obtained and reviewed the contract and related change order documentation. We interviewed the Airport's program manager and Wayne County Field Engineering.

Comment:

a. Chronology of Contract Events

August 15, 1996	Letter sent to Waterland Trucking from Sverdrup Facilities (the Airport's program manager), announcing the notice-to-proceed effective date of August 26, 1996 and an earlier and mutually agreed upon accelerated actual work starting date of August 19, 1996.
August 19, 1996	Mutually agreed upon accelerated actual work starting date.
August 26, 1996	Notice-to-proceed effective date.
November 13, 1996	Wayne County Field Engineering's inspector's daily report (IDR) indicated that the parking lot was partially opened, with employees using only the first two rows of the east side for parking, approximately 122 (22%) of the 553 total spaces. According to the Airport's program manager, this was considered the date of "beneficial occupancy," i.e., the date of "substantial

completion" necessary to meet the 45-day contractual requirement to avoid liquidated damages.

Wayne County Field Engineering also reported in the November 13, 1996 IDR that the contractor had hit an electrical conduit while augering and reported in the subsequent November 14, 1996 IDR that the contractor had hit an Ameritech telephone line while augering. A Wayne County Field Engineering representative indicated to us during an interview that these mishaps did not contribute to the delay in the ultimate opening of the parking lot. Wayne County Field Engineering also indicated that these types of accidents are not uncommon when doing road surface or parking lot type work and that any costs associated with these types of contractor errors are strictly the contractor's responsibility. The IDR indicated that the inspector reminded the contractor that the costs associated with these incidents were at the contractor's expense.

November 19, 1996 through February 12, 1998

Ten change orders totaling $250,528 (45% of the original lump sum contract of $553,046) were added to the contract for a total project price of $803,574. Airport Finance Division documentation showed that, as of November 3, 1998, $803,574 was paid to Waterland Trucking under this contract. According to the Airport's documentation, these change orders were written to compensate the contractor for extra work as requested by the Airport. Because the original 45-day contract time did not allow for the extra work requested by the Airport, the contract completion date was extended. Two change orders (Nos. 7 and 8) added a total of 375 days to the original 45-day contract time, for a new contract time of 420 days. This extended the allowable contract completion date from October 10, 1996 to October 19, 1997.

July 17, 1997	Change Order No. 7, issued under the employee parking lot expansion project, provided for $3,169 for light pole repair at Goddard and Merriman Roads that was unrelated to the project. The change order indicated that, because the original contract did not allow for this extra work, the contract completion date was extended 317 days (362 total days). (See Exhibit D.)
October 19, 1997	Contract completion date according to the project checklist.
October 20, 1997	Change Order No. 8 for $9,080 was issued under the employee parking lot expansion project for unrelated work on asphalt repair to runway 3L-21R. The change order indicated that, because the original contract did not allow for this extra work, the contract completion date was extended 58 days to a total of 375 extended days (420 total days). (See Exhibit C.)
February 12, 1998	Change Order No. 10 for $9,496 was issued under the employee parking lot expansion project for unrelated work to illuminate a sign at the entrance of the Airport on Rogel Drive. The lump sum unit price was negotiated between the contractor and the Airport's program manager to complete all work, including the purchase and installation of materials. The change order also provided a prime contractor mark up of 5%. (See Exhibit B.)

b. Contract Completion

The contractor actually started work on the project on August 19, 1996, as agreed, to expedite occupancy of the lot. However, under the contract provisions, the official start date of the contract was not until August 26, 1996, which the County selected as its notice-to-proceed date. The Airport indicated that the contractor had attained "substantial completion" or the Airport's date of "beneficial occupancy" under the contract terms on November 13, 1996. However, Wayne County Field

Engineering's IDR showed that only two rows of the east side of the parking lot were in use by November 13, 1996. The two rows in use constituted only 22% of the total expanded parking lot spaces.

c. Liquidated Damages

The liquidated damages provision of the contract is contained in Exhibit E.

d. Summary

The project checklist showed that the contract was completed on October 19, 1997. According to the Airport, "substantial completion" and "beneficial occupancy" under the terms of the contract were achieved on November 13, 1996, the date that Wayne County Field Engineering's IDR reported that only two rows of the east side of the parking lot were in use.

Applying either the work beginning date or the notice-to-proceed date results in the following project completion variances:

	"Substantially Completed" in:	Contract Completed in:
Work Beginning Date (August 19, 1996)	86 days (November 13, 1996)	426 days (October 19, 1997)
Notice-to-Proceed Date (August 26, 1996)	79 days (November 13, 1996)	420 days (October 19, 1997)

This contract was not completed within 45 days of the contract execution date. If the Airport had not extended the contract time and absolved the contractor from the 45-day requirement, the Airport would have been entitled to at least $8,500 in liquidated damages (34 days in excess of 45) under the terms of the contract, applying the Airport's "substantial completion" or "beneficial occupancy" date when only 22% of the parking lot was available for use.

According to the Airport's program manager, the Airport did not attempt to collect liquidated damages as provided under the contract because changes to the contract (access problems and changes to the haul route) disadvantaged the contractor. The program manager stated that, if the Airport had sought liquidated

damages, the contractor would have sought extended overhead costs which would have mitigated, or been in excess of, any liquidated damages the Airport may have been entitled to. Additionally, the extension of time granted by Change Order No. 7 absolved the contractor from the 45-day requirement.

Request:
Please conduct a more detailed review and comment on the $241,032 in change orders associated with this contract.

Procedure:
We obtained and reviewed the change orders associated with this contract. We interviewed the Airport's program manager responsible for assisting the Airport in overseeing this contract.

Comment:
The Airport's summary of the change orders for this project is contained in Exhibit A.

We determined that 10 change orders, totaling $250,528 (not $241,032 as originally reported) were implemented beginning November 19, 1996. Of this amount, $70,938 (28%) was related to changes in originally contracted items and $157,845 (63%) was related to new items, including the procurement, installation, and electrical outfitting of heated bus shelters and the installation of traffic control devices ("tiger teeth") for the parking lot. The remaining $21,745 (9%) was for unrelated work (sign illumination at the Airport's entrance on Rogel Drive, runway asphalt repair, and light pole repair at Goddard and Merriman Roads). The final change order was dated February 12, 1998.

According to the project checklist, the contract completion date was October 19, 1997. Three of the 10 change orders were issued subsequent to the October 19, 1997 completion date (October 20, 1997, October 22, 1997, and February 12, 1998).

The Airport's program manager stated that the Airport's original plan was to expand the parking lot, using existing bus shelters. After the contract was let, some employee groups requested that new, upgraded shelters be installed. In consideration of the inclement weather and 24-hour shifts, the Airport agreed to numerous changes, including the installation of new, heated, and lighted shelters. These new shelters required extensive procurement, installation, and electrical work. The Airport also later decided to add traffic control devices ("tiger teeth") on two drives accessing the parking lot, according to the program manager.

The additional employee parking lot related work was not separately bid out. Instead, it was added to the contract through 5 change orders. The Airport's program manager stated that time was of the essence, the bid process would have taken 4 to 6 months, and the bid process itself would have cost the Airport money. Given these factors, the Airport concluded that it was more practical and advantageous to execute change orders to the existing contract rather than bid out the new items separately.

The unrelated projects that were completed under this parking lot contract were not competitively bid. This violated Section 3.116 of the Wayne County Charter and Section 2(b)(1) of the Purchasing Ordinance (94-457).

Request:
Please determine whether County ordinances require the Commission to approve this contract and the significant change orders associated with this contract, and whether the contract was approved in compliance with these ordinances.

Procedure:
We obtained and reviewed applicable County ordinances. We interviewed appropriate Airport personnel and Airport contractors.

Comment:
We determined the following from our review of County ordinances for Commission approval of the contract and change orders:

a. Commission Approval of the Contract

The Airport did not seek Commission approval of this contract as required by the Wayne County Contracting Ordinance (84-143), Appropriations Ordinances, and Purchasing Ordinance (94-457):

1. Wayne County Contracting Ordinance (84-143)

<u>Section 1(E) of the Contracting Ordinance</u> - The authority to execute contracts in excess of $50,000 for construction, reconstruction, renovation, or other improvement of County property **was not** delegated by the Commission to the County Executive.

Section 8(A) of the Contracting Ordinance - The County Executive shall submit to the Commission, as part of the comprehensive budget, an annual Capital Outlay Plan for approval. The Plan shall contain the detail required by Section 5.126(f) of the Wayne County Charter. Capital outlays shall include construction, reconstruction, renovation, or other capital improvement of County property, property under the jurisdiction of the County, or right of way.

Section 8(B) of the Contracting Ordinance - Notwithstanding the provisions of Section 1(E) of this Ordinance, the County Executive may execute contracts for construction, reconstruction, and renovation projects **which are contained in the annual Capital Outlay Plan.**

Section 8(C) of the Contracting Ordinance - Approval of appropriations to fund the annual Capital Outlay Plan shall constitute Commission delegation of authority to the County Executive to approve and execute contracts contained in the annual Capital Outlay Plan.

During our preliminary review, the Airport indicated that this agreement did not require Commission approval because it fell under the preceding "delegated authority" provisions. Specifically, the Airport cited Section 8 of the Wayne County Contracting Ordinance (84-143), indicating that this project was included in the annual Capital Outlay Plan approved by the Commission (see pages 70 and 71 of the Preliminary Review of Competitive Bidding of Contracts).

During our more detailed review, in a September 21, 2000 interview, a representative of the Airport's program manager also cited the Contracting Ordinance and stated that the Airport was authorized to execute contracts in excess of $50,000 for construction, reconstruction, renovation, or other improvements without Commission approval because this contract was part of the annual Capital Outlay Plan.

In our more detailed review, we found no evidence to substantiate the Airport's and program manager's assertions that this project was included in the annual Capital Outlay Plan as required in order to be under the "delegated authority" provisions of the Contracting Ordinance. Furthermore, during a subsequent interview on September 26, 2000, the Director of Airport Finance conceded that this project was not contained in the Airport's Section 8 Capital Outlay

Plan. Because this contradicted earlier statements made by the Airport during the preliminary review, we interviewed a second representative of the Airport's program manager on September 28, 2000, who believed that the project was contained in the Airport's Section 8 Capital Outlay Plan.

We requested that the Airport explain the difference in understanding of the project's Section 8 Capital Outlay Plan status and provide us with documentation of the project's true status. Upon consultation with the Director of Airports and the Director of Airport Finance, the Airport's program manager supplied us with a written memorandum stating that the project **was not** part of the Airport's Section 8 Capital Outlay Plan (see Exhibit F).

This project was not a part of the Airport's Commission-approved Section 8 Capital Outlay Plan. Thus, the Airport did not have Commission approval or delegated authority to execute the contract.

2. Wayne County Appropriations Ordinances

Section 41(F) of Wayne County Appropriations Ordinance 99-497 and Section 46(F) of Appropriations Ordinance 95-769 (in effect when the contract was executed on August 1, 1996) state that, notwithstanding any provision of the Contracting Ordinance or other ordinance to the contrary, the County Executive is authorized to execute contracts in excess of $20,000 to implement projects in the approved Capital Outlay Plan, subject to certain conditions regarding competitive bidding.

Furthermore, Section 41(C) of Appropriations Ordinance 99-497 and Section 46(C) of Appropriations Ordinance 95-769 both provide that the County Executive must present for prior Commission approval all contracts in excess of $50,000. With an original contract amount of $553,046, this contract was executed without Commission approval in violation of the Appropriations Ordinance.

3. Wayne County Purchasing Ordinance (94-457)

<u>Section 5 of the Purchasing Ordinance</u> - Commission approval is required for certain contracts. Except as provided in the Appropriations Ordinance and in

the Contracting Ordinance, the County's Purchasing Director shall enter into "major" contracts for goods and services only with Commission approval.

Section 1(f) of the Purchasing Ordinance - Construction contracts not less than $100,000 are defined as "major" under the Purchasing Ordinance.

The Airport did not seek Commission approval on the original contract for $553,046. With an original contract amount exceeding $100,000, this "major" contract was executed without Commission approval in violation of the Purchasing Ordinance.

b. Commission Approval of Change Orders

The Airport did not seek, and County ordinances did not require, Commission approval of the 8 change orders associated with the employee parking lot expansion contract. Section 46(D) of the Appropriations Ordinance (95-769) specifically excludes change orders for nonprofessional service contracts under Airport construction projects.

The Airport also did not obtain Commission approval for the 2 unrelated change orders for runway asphalt repair and the Rogel Drive sign illumination that were charged to this contract. Under Section 1(F) of the Contracting Ordinance, the Commission did not delegate its approval authority for sole source procurements in excess of $5,000. These services were procured without Commission approval as required by County ordinance.

Request:
Please confirm the accuracy of the representations made by the *Detroit News* on April 5, 2000 concerning the Waterland Trucking contract.

Procedure:
We read the *Detroit News* article and confirmed the accuracy of the representations contained therein.

Comment:

The April 5, 2000 *Detroit News* article stated the following with respect to our preliminary review of the Waterland Trucking contract:

> In 1996, the airport ran $241,000 over budget on an expansion of the employee parking lot.

Our more detailed review uncovered an additional $9,496 change order dated February 12, 1998 (Change Order No. 10) for a total of $250,528.

Scope Limitation:

Our ability to complete this detailed review in accordance with *Government Auditing Standards* was impeded by the Airport's practice of placing an Airport observer in certain interviews that we conducted with Airport employees and private contractors. Not having had the opportunity to conduct these interviews without this scope limitation, we could not assess if it would have affected the results of this detailed review.

We have advised the Director of Airports on two occasions that this practice tends to suppress candid and open responses, inhibiting the free flow of information. Nevertheless, the Airport has continued to insist on the presence of these Airport observers. We also do not consider this practice to be consistent with the spirit and intent of the May 10, 2000 resolution of the Joint Legislative Select Committee on the Wayne County Detroit Metropolitan Airport, which compelled the Airport to provide us with immediate, direct, complete, and unrestricted access to any and all records and persons necessary to complete our detailed review.

Airport Response:

The draft report was shared with the Airport on December 12, 2000. The Airport acknowledged that there were weaknesses in the management practices used in administering this contract. The Airport described its plans to improve its management of contracts. The Airport's response is presented in Exhibit G.